

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ARIC W. HALL §
v. § CIVIL ACTION NO. 6:07CV246
RUSSELL D. HODGKINS, ET AL. §

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation recommends that Defendants' Motion to Quash Service of Process (document #23) be granted and Defendant's Motion to Dismiss (document #23) denied. Plaintiff filed written objections on November 6, 2007.

Having made a *de novo* review of the written objections filed by Plaintiff, the Court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. Plaintiff seeks substituted service pursuant to Fed.R.Civ.P. 4(e)(1), which allows service to be effected pursuant to the law of the state in which the district court is located. Plaintiff asserts that he should be permitted to serve Defendants by publication or by leaving a copy of the summons and complaint at their place of business. Pursuant to Texas law, substituted service is permissible only

“after due diligence” and after Plaintiff has “been unable to locate the whereabouts of such defendant.” Tex.R.Civ.P. 109. In this case, Plaintiff has only attempted service by certified mail without restricting the mail to addressee only, as required by Local Rule CV-4 for service by mail. He has not made a showing that he has exercised due diligence in attempting service or that he has been unable to locate the whereabouts of a defendant. The findings and conclusions of the Magistrate Judge are hereby adopted as those of the Court.

In light of the foregoing, it is

ORDERED that the Motion to Quash Service of Process (document #23) is **GRANTED** and the Motion to Dismiss the Suit (document #23) is **DENIED**. Plaintiff shall have thirty days from entry of this Order to serve Defendants.

SIGNED this 20th day of November, 2007.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE